

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

UNITED STATES OF AMERICA)	
)	
v.)	1:04-cv-363/1:98-cr-61
)	Chief Judge Curtis L. Collier
CLARENCE SCHREANE)	

MEMORANDUM AND ORDER

This matter is presently before the Court on a Rule 60(b) motion filed by Clarence Schreane (“Schreane”) (Court File No. 23). Schreane was sentenced to a term of three hundred and twenty-seven months in prison on October 5, 2001, on one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Schreane pursued his direct appeal. His conviction and sentence became final after the Supreme Court of the United States denied certiorari on October 20, 2003. Schreane filed a motion under 28 U.S.C. § 2255 on November 8, 2004, and it was denied as time-barred on December 13, 2004, *United States v. Schreane*, 1:04-cv-363 (E.D. Tenn. 2004). Schreane has previously filed three Rule 60(b) motions (Court File Nos. 6, 14, 19), all of which have been denied (Court File Nos. 8, 16, 20).

Schreane is attempting to obtain relief, more than five years after this Court dismissed his § 2255 motion as time-barred (Court File Nos. 4, 5). Schreane asserts he is entitled to relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure in light of *Gonzalez v. Crosby*, 545 U.S. 524 (2005). Schreane claims he is entitled to equitable tolling due to extraordinary circumstances.

This Court recognizes that Fed. R. Civ. P. 60(b) *may* have some limited application in prisoner habeas corpus proceedings and collateral post-conviction proceedings under 28 U.S.C. § 2255. *Gonzalez v. Crosby*, 545 U.S. 524, 529 n. 3 (2005); *Abdur’Rahman v. Bell*, 392 F.3d 174 (6th Cir. 2004). However, Rule 60 of the Federal Rules of Civil Procedure mandates that motions

filed pursuant to Rule 60(b)(6) must be filed within a reasonable time. Fed. R. Civ. P. 60(c)(1). Schreane had more than ample time to move to reopen this Court's decision denying his § 2255 motion pursuant to Rule 60(b) in light of any perceived clarification provided by *Gonzalez*. This Court's Order was entered on December 13, 2004, the *Gonzalez* case, upon which Schreane relies was decided June 23, 2005, and this motion was filed on or about March 3, 2010. Thus, Schreane's Rule 60(b) motion was not filed within a reasonable time.

Accordingly, Schreane's Rule 60(b) motion is **DENIED** as untimely(Court File No. 23).

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE